

Unless an exemption is documented, the sale and delivery of tangible personal property to an Illinois customer creates a legal presumption that the sale is for use in Illinois and subject to tax. See 35 ILCS 105/4. (This is a GIL.)

September 20, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 1, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am a licensed Indiana automobile dealer and also hold an Indiana Certificate of Resale. I am experiencing a problem with one of my Illinois vendors, who recently started insisting that they were required by Illinois Statute, to charge our dealership for Illinois sales tax on items that they ship to us at an alternative address. Either they or I seem not to comprehend the definition of 'drop shipment' as stated in **Illinois Title 86, Part 130 Section 130.225 (a)**, as opposed 'an alternative address shipment.'

In the circumstances that I am referring to, the vendor is selling and delivering parts to our company, at an Illinois repair facility, for use on our own company vehicle inventory. These vehicles are moved to our Indiana dealership and held for resale, in our inventory; those that do not meet our expectations are sold through dealer-only auto auctions. We do not resell these individual parts to subsequent purchasers within the State of Illinois. If we incidentally retail a vehicle from our inventory, into the State of Illinois, the State of Illinois will collect the appropriate amount of sales tax on the full transaction price at the time when Illinois license plates and an Illinois title are ordered.

I am convinced that, with regard to **Illinois Title 86, Part 130 Section 130.225 (a)**, we are exempt for, not one, but two reasons; (1) because we do not meet the absolute

criteria of a drop shippers and; (2) because, we have and will again, if asked, supply this vendor with a valid Indiana Certificate of Resale.

We hope to hear from you forthwith, otherwise, we will necessary for us to discontinue doing business with a vendor with whom we have a long and mutually satisfactory relationship.

Thank you for you advice and determination in this matter.

## **DEPARTMENT'S RESPONSE**

The information provided in your letter indicates that an Illinois vendor is selling and delivering parts to your company at its Illinois repair facility where those parts become part of the vehicles that you subsequently take to Indiana and sell. This is not a drop-shipment situation. Because an Illinois vendor is selling parts delivered to you in Illinois, tax is due unless an exemption can be documented. In the instant case, it appears the resale exemption may be applicable. See 86 Ill. Adm. Code 130.210 and 130.1405. If the repair work was being done by a third party, please be advised that our response could change.

Except in the case of sales to totally exempt purchasers, when sales for resale are made, sellers should, for their protection, take a Certificate of Resale from the purchaser. Mere statements by sellers that property was sold for resale will not be accepted by the Department without corroborative evidence. Certificates of Resale may be made a part of purchase orders signed by the purchaser. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certificate of Resale to Out-of-State purchaser:
  - a) purchaser's registration number with the Illinois Department of Revenue; or
  - b) purchaser's resale number issued by the Department of Revenue; or
  - c) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale, or that a particular sale is a sale for resale (section 2c of the Act). For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois.

In summary, if your company submits to your Illinois vendor your *Illinois Department of Revenue* properly completed Certificate of Resale, your Illinois vendor does not have to collect sales tax. If the documentation is not submitted, the Illinois vendor should collect and remit tax. Unless an exemption is documented, the sale and delivery of tangible personal property to an Illinois customer creates a legal presumption that the sale is for use in Illinois and subject to tax. See 35 ILCS 105/4.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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